NEW MEXICO
ENVIRONMENT DEPARTMENT

Harold Runnels Building
1190 South St. Francis Drive (87505)
P.O. Box 5469, Santa Fe, NM 87502-5469
Phone (505) 827-0187 Fax (505) 827-0160
www.nmenv.state.nm.us

SUSANA MARTINEZ
Governor
JOHN A. SANCHEZ
Lieutenant Governor

RYAN FLYNN
Cabinet Secretary
BUTCH TONGATE
Deputy Secretary

RECEIVED
FEB PM 3:29
6WQ-N
PLANNING & ANALYSIS BRANCH

Original via UPS -- Copy via Electronic Mail

February 3, 2015

RECEIVED
15 FEB -6 PM 3:29
6WQ-N
PLANNING & ANALYSIS BRANCH

Mr. William K. Honker, Director
Water Quality Protection Division (6WQ)
U. S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: State Certification

Dear Mr. Honker:

Enclosed, please find the state certification for the following proposed National Pollutant Elimination System (NPDES) permit:

U.S. Department of Energy and Los Alamos National Security, LLC - Los Alamos National Laboratory - NM0028355 Modification

If any, comments and conditions are enclosed on separate sheets.

U.S. Environmental Protection Agency (USEPA) proposes to regulate discharges under the above-referenced NPDES Individual Permit. A state Water Quality Certification is required by the federal Clean Water Act (CWA) §401 to ensure that the action is consistent with state law (New Mexico Water Quality Act, sections 74-6-1 through 74-6-17, New Mexico Statutes Annotated (NMSA) 1978) and complies with state Water Quality Standards [State of New Mexico, Standards for Interstate & Intrastate Surface Waters, New Mexico Water Quality Control Commission, 20.6.4 New Mexico Administrative Code (NMAC)], the Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy.

Pursuant to State regulations for permit certification (Section 20.6.2.2001 NMAC), USEPA jointly with NMED issued a public notice of a draft permit modification and announced a public comment period which was posted on the NMED web site www.nmenv.state.nm.us/swqb/WQA/Notice on December 23, 2014. The public comment period ended on January 19, 2015 and January 23, 2015, USEPA and NMED, respectively. NMED received 1 comment during the public comment period for the modification which was submitted prior to the close of the comment period. This comment was considered in the development of this certification. NMED will send a copy of this conditional certification to the member of the public who submitted comments to the department under separate correspondence.

Please contact Bruce Yurdin 505-827-2795, if you have any questions concerning the certification.

Sincerely,

James Hogan, Bureau Chief
Surface Water Quality Bureau

cc:
-Ms. Evelyn Rosborough, USEPA (6WQ-NP) via e-mail
-Mr. Brent Larsen, USEPA (6WQ-PP) via e-mail
-Ms. Kim Davis Lebak, Manager, U.S. Department of Energy (USDOE), Los Alamos Field Office, 3747 West Jemez Road, MS A316, Los Alamos, NM 87544 via Certified Mail (7005 1820 0001 5771 6790)
-Ms. Alison Dories, Division Leader, Environmental Protection Division, Los Alamos National Security, LLC (LANS), P.O. Box 1663, MS K491, Los Alamos, NM 87545-0001 via Certified Mail (7005 1820 0001 5771 6806)
-Mr. Gene Turner, DOE/AIP/POC via e-mail
-Mr. Mike Saladen, LANS, ENV-RCRA via e-mail

Mr. Ron Curry, Regional Administrator
Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733

02/03/2015

STATE CERTIFICATION

RE: U.S. Department of Energy and Los Alamos National Security, LLC - Los Alamos National Laboratory - NM0028355 Modification

Dear Mr. Curry:

The New Mexico Environment Department has examined the proposed NPDES permit above. The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable water quality standards and the water quality management plan and will be in compliance with the antidegradation policy.

The State of New Mexico

( ) certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law

(X) certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of the following conditions in the permit **(see attachments)**

( ) denies certification for the reasons stated in the attachment

( ) waives its right to certify

In order to meet the requirements of State law, including water quality standards and appropriate basin plan as may be amended by the water quality management plan, each of the conditions cited in the draft permit and the State certification shall not be made less stringent.

The Department reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan.

Please contact Bruce J. Yurdin at (505) 827-2795, if you have any questions concerning this certification. Comments and conditions pertaining to this draft permit are attached.

Sincerely,

James Hogan, Chief
Surface Water Quality Bureau

U.S. Department of Energy and Los Alamos National Security, LLC
Los Alamos National Laboratory
NM0028355

State of New Mexico
Conditional Certification of the Proposed NPDES Permit Modification
February 3, 2015

Conditions of State Certification

The following revisions are necessary to ensure that discharges allowed under the National Pollutant Discharge Elimination System (NPDES) permit protect State of New Mexico water quality standards (WQS) adopted in accordance with §303 of the Clean Water Act (CWA) and the New Mexico Water Quality Act [Chapter 74, Article 6 NMSA 1978]. State of New Mexico (State) WQS are published in the document entitled Standards for Interstate and Intrastate Surface Waters, New Mexico Water Quality Control Commission (WQCC), 20.6.4 New Mexico Administrative Code (NMAC) as amended by the WQCC and approved by the United States Environmental Protection Agency (USEPA) as of June 5, 2013.

USEPA regulations at 40 CFR 122.44(d)(1)(i) require that permit

> *[l]imitations must control all pollutants or pollutant parameters...which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard...."*

The State, pursuant to the authorities listed above and below, herein requests that the USEPA include the following condition (Condition #1) as part of the LANL NPDES Final Permit Modification for Outfall 001. Regulations at 40 CFR 124.53(a)(3) require that a state certification have "*A statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards.* Condition #1 is consistent with and will not violate the requirements of State law or State water quality standards.

Permitted Discharge Locations, Water Quality Segments, and State WQS

The NPDES permit authorizes the U.S. Department of Energy and Los Alamos National Security, LLC (hereafter "Permitees") to discharge from eleven (11) outfalls at the Los Alamos National Laboratory (LANL) site to State WQS Segments found in 20.6.4.126 and 20.6.4.128 NMAC [2013] which are tributaries to the Rio Grande in the Rio Grande Basin. Outfalls 001 (001) discharge to Sandia Canyon in Segment 20.6.4.126.

State WQS 20.6.4.126 NMAC describes Segment 20.6.4.126 as, "*Perennial portions of...Sandia canyon from Sigma canyon upstream to LANL NPDES outfall 001... A. Designated Uses: coldwater aquatic life, livestock watering, wildlife habitat and secondary contact. B. Criteria: the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.*" 20.6.4.126 NMAC (2013).

State WQS 20.6.4.7 NMAC (Definitions) include:

> *"6T3 temperature" means the temperature not to be exceeded for six or more consecutive hours in a 24-hour period on more than three consecutive days.*
>
> *"Coldwater" in reference to an aquatic life use means a surface water of the state where the water temperature and other characteristics are suitable for the support or propagation or both of coldwater aquatic life.*
>
> *"Maximum temperature" means the instantaneous temperature not to be exceeded at any time.*

20.6.4.7 NMAC (2013).

State WQS 20.6.4.900.H (Aquatic Life) states "*Surface waters of the state with a designated, existing or attainable use of aquatic life shall be free from any substances at concentrations that can impair the community of plants and animals in or the ecological integrity of surface waters of the state....the specific criteria for aquatic life subcategories...apply...(2) NMAC for Coldwater Aquatic Life states "...6T3 temperature 20°C (68°F), maximum temperature 24°C (75°F)....*" 20.6.4.900 NMAC (2013).

Permit and Certification History

Excerpts from Part I.A for Outfall 001 of the previous permit effective August 1, 2007 for temperature monitoring and limitations in degree Celsius (°C) required:

Effluent Characteristic	*Monthly Average*	*Daily Maximum*	*Frequency*	*Sample Type*
Temperature (°C)	*24°C*	*24°C*	*1/Week*	*Grab*

On September 19, 2013, the Surface Water Quality Bureau (SWQB) of the New Mexico Environment Department provided to the U.S. Environmental Protection Agency (USEPA) a conditional certification pursuant to Section 401 of the Clean Water Act for the above referenced permit. Condition #4 of the 2013 State Conditional Certification stated:

> *The Final Permit must include additional monitoring and limitations for temperature to protect the designated uses of Coldwater Aquatic Life of the classified receiving stream in Segment 20.6.4.126 NMAC, as described and defined in State WQS 20.6.4.900.H(2) and 20.6.4.7.A(2) NMAC.*

Part I.A for Outfall 001 of the Final Permit effective October 1, 2014 for temperature monitoring and limitations required only 6T3 monitoring and limitations with a schedule of compliance as follows:

Effluent Characteristic	*Monthly Average*	*Daily Maximum*	*Frequency*	*Sample Type*
6T3 Temperature (°C)	*(*4)*	*(*4)*	*1/Hour*	*Grab (or Continuous Record)*

Footnotes

**4* *6T3 Temperature of 20°C (68° F) shall not be exceeded for six or more consecutive hours in a 24-hour period on more than three consecutive days. The effluent limitation 6T3 = 20 °C takes effect on the date one-day before the permit expiration date.*

Condition #1

Part I.A for Outfall 001 of the Draft Permit Modification for temperature monitoring and limitations requires:

Effluent Characteristic	*Monthly Average*	*Daily Maximum*	*Frequency*	*Sample Type*
*Temperature (°C)(*4)*	*20°C*	*20°C*	*1/Week*	*Grab*
6T3 Temperature (°C)	*(*5)*	*(*5)*	*1/Hour*	*Grab (or Continuous Record)*

Footnotes

**4* *Monitoring and reporting requirements for temperature end when 6T3 Temperature limitations become effective.*

**5* *6T3 Temperature of 20°C (68°F) shall not be exceeded for six or more consecutive hours in a 24-hour period on more than three consecutive days. The effluent limitation and monitoring requirements of 6T3 takes effective on the date one-day before the permit expiration date.*

The Final Permit Modification must be protective of both the maximum temperature and 6T3 temperature numeric criteria to protect the designated uses of Coldwater Aquatic Life of perennial portions of Sandia Canyon from Sigma Canyon upstream to LANL NPDES Outfall 001 in Segment 20.6.4.126 NMAC, as described and defined in State WQS 20.6.4.900.H(2), 20.6.4.7.A(2) NMAC (6T3 temperature), and 20.6.4.7.M(3) NMAC (maximum temperature). As such the Final Permit Modification shall have the following change:

- Footnote *4 for Outfall 001 in Part I.A of the Final Permit shall be changed to state "*Monitoring and reporting requirements for daily maximum temperature do not end when 6T3 Temperature monitoring and limitations become effective.*"

In addition, consistent with the regulations at 40 CFR 124.53(a)(3), the following can be less stringent without violating the requirements of State law or State water quality standards:

- The numeric daily maximum temperature value of 20°C for Outfall 001 in Part I.A can changed to 24°C if the Final Permit.
- A numeric temperature monthly average of 20°C is not based on State law or State water quality standards. The monthly average reporting requirement and limitation of 20°C can be removed from the Final Permit

NMED offers the following suggestions for temperature and 6T3 temperature monitoring and effluent language for Outfall 001 in Part I.A of the Final Permit Modification that will incorporate this condition:

Effluent Characteristic	*Monthly Average*	*Daily Maximum*	*Frequency*	*Sample Type*
*Temperature (°C)(*4)*	***	*24°C*	*1/Week*	*Grab*
6T3 Temperature (°C)	*(*5)*	*(*5)*	*1/Hour*	*Grab (or Continuous Record)*

Footnotes

**4 Monitoring and reporting requirements for daily maximum temperature do not end when 6T3 Temperature monitoring and limitations become effective.*

**5 6T3 Temperature of 20°C (68°F) shall not be exceeded for six or more consecutive hours in a 24-hour period on more than three consecutive days. The effluent limitation and monitoring requirements of 6T3 takes effect on the date one-day before the permit expiration date.*

Comments That Are Not Conditions Of Certification

Comment #1: If USEPA decides to include the daily maximum temperature monthly average reporting requirement and limitation, then the reason should be included in USEPA Response to Comments.

Comment #2: Municipal terms for "monthly average" and "daily maximum" in standard conditions Part III.F.22 of the Permit are not applicable to 6T3 temperature conditions. Clarification that the terms are not applicable for Outfall 001 in the footnotes of Part I.A of the Final Permit Modification is recommended. The following language could be added to Footnote *5 for Outfall 001 in Part I.A of the Final Permit Modification for clarification:

> *For 6T3 temperature, terms for monthly average and daily maximum in standard conditions in Part III of the Permit are not applicable.*

Comment #3: Standard conditions in Part III.D.5 of the 2013 Final Permit state *"If the permittee monitors any pollutant more frequently than required by this permit, the results of this monitoring shall be included in the reporting of the data...."* Data collected or measured for temperature will increase as a result of the Final Permit Modification once 6T3 temperature requirements take effect for Outfall 001. Therefore, it is NMED's understanding that the Permittees will need to include all data collected at a required frequency of 1/Hour when 6T3 temperature takes effect when reporting both daily maximum temperature and 6T3 temperature per standard conditions of the Final Permit Modification. Clarification that increased monitoring and reporting for daily maximum temperature will be required in Outfall 001of Part I.A of the final Permit Modification is recommended. The following language could be added to Footnote *4 for Outfall 001 in Part I.A of the Final Permit Modification for clarification:

> *Once monitoring for 6T3 takes effect, sample frequency and type shall change to 1/Hour and Grab (or Continuous Record), respectively, consistent with standard conditions in Part III of the Permit.*